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MEMORANDUM FOR:

[REDACTED]
Assistant General Counsel

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FROM:

[REDACTED]
Assistant Legislative Counsel

SUBJECT:

- Proposed New Secrecy Agreement

1. The comments and suggestions below pertain to the 1 December draft of the proposed new secrecy agreement, which is scheduled for discussion by the working group on 7 December.

2. Sources and Methods: I believe the phraseology should be "sources or methods," at least in the context of the secrecy agreement. We should not give the impression that only unauthorized disclosures that reveal both sources and methods are violations of the agreement. The changes should be made in paragraphs two and three; paragraph four already uses the "or" formulation. I also think that the word "sensitive" should be dropped where it precedes "sources or methods."

3. I would like to see some argumentation in favor of treating sources and methods as a distinct category go forward to the General Counsel and eventually to the DCI.

4. Assignment Clause: I believe that the argument against inclusion of a clause assigning to the United States all financial gain resulting from a violation of the agreement is weak and that such a clause should be included. The fact that such clauses have been included in secrecy agreements between Congressional committees and their staff personnel at the Agency's urging is a matter of some significance. To refrain from including a similar provision in our own secrecy agreement merely because we now have some doubt about its judicial enforceability could have an adverse impact on our relations with key committees and would unnecessarily deprive the Agency of what may be the only effective sanction for violation of the agreement. The severability provision is specifically designed to preserve the remainder of the agreement if any of its provisions are declared void by the courts; I believe we would be wrong to decide the issue against ourselves beforehand.

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5. "Whistle-Blower" Clause: Here again I believe the arguments against inclusion are weak. The secrecy agreement should make clear that there are channels for employee reporting of allegations of unlawful or improper intelligence activities other than unauthorized public disclosure. I think the benefit to be gained from explicit reference to such avenues clearly outweighs any "appearance of preconceived guilt."

6. The absence of a "whistle-blower" provision would almost certainly cause problems with our Congressional oversight committees. In testimony before the Senate Select Committee on Intelligence's Subcommittee on Secrecy and Disclosure last March, the DCI included the Senate and House Select Committees on Intelligence among "authorized mechanisms" for an individual's reporting of alleged intelligence abuses. The DCI should not be put in a position of promulgating a new secrecy agreement that can be interpreted as prohibiting the reporting of alleged wrong doing to the SSCI and/or HPSCI. A provision making specific reference to the forums that individuals may use to report allegations would be preferable; such a provision appears below. In lieu of this we should at least make some reference to authorized procedures being available.

Proposed New Paragraph:

I understand that I am obliged to report to the Director of Central Intelligence or to the Central Intelligence Agency's Inspector General any intelligence activity which I consider to be unlawful or improper. Moreover, I understand that nothing contained in this agreement prohibits me from reporting intelligence activities which I consider to be unlawful or improper to the Intelligence Oversight Board established by the President, the Senate Select Committee on Intelligence, or the House Permanent Select Committee on Intelligence (or their duly constituted successors). I further understand that any information which I may transmit to the Board or to these Congressional committees continues to be subject to this agreement for all other purposes and that such transmittal does not constitute public disclosure or declassification of that information.

7. I also have several technical suggestions which I will table at our meeting.

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Dist. : Orig-Addressee

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